

REMARKS

Applicants file concurrently herewith a Request for Continued Examination (RCE) in response to the Final Office Action mailed September 19, 2007 (hereinafter, "Office Action"). In the Office Action, the Examiner rejected claims 1-45 under 35 U.S.C. § 112, ¶ 2; rejected claims 1-3, 5-9, 14-17, 19-23, 28-31, 33-37, and 42-45 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2001/0047336 to Maycock, Jr. et al. (hereinafter, "*Maycock*") in view of U.S. Patent Application Publication No. 2002/0026348 to Fowler et al. (hereinafter, "*Fowler*"); and rejected claims 4, 10-13, 18, 24-27, 32, and 38-41 under 35 U.S.C. § 103(a) as being unpatentable over *Maycock*, *Fowler*, and U.S. Patent Application Publication No. 2002/0069122 to Yun et al. (hereinafter, "*Yun*").

By this response, Applicants amend claims 1, 14, 15, 28, 29, and 42-45. No new matter has been added. Accordingly, claims 1-45 remain pending.

Based on the following remarks, Applicants respectfully traverse the rejections of claim 1-45 under 35 U.S.C. §§ 103(a) and 112, ¶ 2, and respectfully request allowance of the pending claims.

I. Response to Advisory Action

In the Final Office Action, the Examiner rejected claims 1-45 under 35 U.S.C. § 112, second paragraph. In the Advisory Action mailed January 22, 2008, (hereinafter, "Advisory Action"), the Examiner only addressed the § 112 rejection of dependent claims 10 and 11. The Examiner did not address the remaining § 112 rejection and Applicants' separate response to those § 112 rejections. Nevertheless, in the Advisory

Action, the Examiner states that “the Examiner maintains the rejections under 35 U.S.C. 112, second paragraph.” Advisory Action, p. 2.

With respect to claims 10 and 11, while Applicants appreciate the detailed response given by the Examiner, Applicants note that the Examiner provides several examples related to the recitations of these claims. *Id.* Thus, it appears that the Examiner is tacitly acknowledging that these claims are not indefinite. Rather, it seems that the Examiner is suggesting that these claims are broad. According to the *M.P.E.P.*, “[b]readth of a claim is not to be equated with indefiniteness.” *M.P.E.P.* § 2173.04 (internal citations omitted) (emphasis added). “If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.” *Id.*

Accordingly, Applicants respectfully request that the Examiner consider the arguments presented below with respect to the rejection of claims 1-45 under 35 U.S.C. § 112, ¶ 2. In particular, Applicants request that the Examiner address the two distinct rejections made under 35 U.S.C. § 112, ¶ 2.

II. Rejection Under 35 U.S.C. § 112, ¶ 2

A. Claim 1

The Examiner rejected claim 1 under 35 U.S.C. § 112, ¶ 2, as allegedly being indefinite. Specifically, according to the Examiner, “the phrase ‘selected vendor’ renders the claim indefinite because no vendor is actually selected in the claim.” Office Action, p. 2.

While Applicants respectfully disagree with this characterization of claim 1, Applicants have nevertheless amended claim 1 to expedite prosecution. In particular, Applicants have amended claim 1 to recite, *inter alia*, "receiving an indication from the consumer of a selected vendor to be associated with the first account component." Although not rejected by the Examiner under 35 U.S.C. § 112, ¶ 2, independent claims 15 and 29 have been similarly amended. These changes do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined.

Accordingly, based on the foregoing amendments and remarks, the rejection of claims 1-45 under 35 U.S.C. § 112, ¶ 2, is improper and should be withdrawn.

B. Claims 1, 10-14, 15, and 29

In addition, the Examiner rejected claims 1, 10-14, 15, and 29 under 35 U.S.C. § 112, ¶ 2, stating that "the phrase 'first fees' and 'second fees' renders the claims indefinite" *Id.* In particular, the Examiner alleges that "it is not clear whether the first fees and second fees of claims 10-13 are the **same or related to** the one or more fees adjusted in claim 1." Office Action, pp. 2-3 (emphasis added).

According to the *M.P.E.P.*, "it is not essential to a patentable combination that there be interdependency between the elements of the claimed device or that all the elements operate concurrently toward the desired result." *Id.* (citation omitted). Moreover, "[a] claim does not necessarily fail to comply with 35 U.S.C. § 112, second paragraph where the various elements do not function simultaneously, are not directly

functionally related, do not directly intercooperate, and/or serve independent purposes.”

M.P.E.P. § 2172.01 (citation omitted).

Here, claim 1 includes the recitations of “processing purchase transactions with the selected vendor based on the first account parameter,” “processing purchase transactions with other vendors based on the second account parameter,” and “adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined period of time.” Claim 10 recites, *inter alia*, “wherein processing purchase transactions with the selected vendor comprises: applying first fees to the financial account for purchase transactions with the selected vendor based on the first account parameter.” Claim 11 recites, *inter alia*, “wherein processing purchase transactions with the other vendors comprises: applying second fees to the financial account for purchase transactions with the other vendors based on the second account parameter”

Thus, claim 10 provides a further limitation to the claim 1 step of “processing purchase transactions with the **selected** vendor based on the first account parameter,” and claim 11 provides a further limitation to the claim 1 step of processing purchase transactions with **other** vendors based on the second account parameter” (emphasis added). The Examiner improperly asserts that Applicants must associate the claimed first and second fees with the claim 1 step of “adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined period of time.” This is contrary to the guidelines established in the

M.P.E.P. Applicants submit that claims 10-13 and claims 15 and 29 and their dependent claims are definite.

Moreover, as discussed above, "[b]readth of a claim is not to be equated with indefiniteness." *M.P.E.P.* § 2173.04 (internal citations omitted) (emphasis added). "If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph." *Id.* In this case, in addition to the exemplary embodiments disclosed in the specification, the Examiner describes several additional examples. See Advisory Action, p. 2. Thus, it appears that the Examiner is acknowledging that the scope of the claim is clear, and the claims are not indefinite.

Accordingly, based on the foregoing amendments and remarks, the rejection under 35 U.S.C. § 112, second paragraph, is improper, should be withdrawn, and the claims allowed.

III. Rejection Under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 1-45 under 35 U.S.C. §103(a) as being unpatentable over the cited art because a *prima facie* case of obviousness has not been established. The Examiner has the initial burden of factually supporting any *prima facie* conclusion of obviousness. See *M.P.E.P.* § 2142. To do so, the Examiner must first establish the Graham factual findings, and then make a determination whether the claimed invention "as a whole" would have been obvious to a person of ordinary skill in the art at the time of the invention. *Id.*; see also *M.P.E.P.* § 2141(IV). The Graham inquiries include determining the scope and content of the

prior art; ascertaining the difference between the claimed invention and the prior art; and resolving the level of ordinary skill in the pertinent art. See *M.P.E.P.* § 2141(II). To make the determination of whether the claimed invention would have been obvious based on the factual findings under Graham, the Examiner must consider factors such as the predictability of the results of combining the prior art references or substituting one known element for another; whether a known technique was used to improve similar devices in the same way; whether a known technique was applied to a known device ready for improvements to yield predictable results; whether there were design incentives or other market forces prompting variations of known work in one field for use in the same or a different field; and the teaching, suggestion, and motivation contained in the prior art references. See *M.P.E.P.* § 2141(III). The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. *Id.*

In this case, the rejection of claims 1-45 under 35 U.S.C. § 103(a) is improper because the Examiner does not demonstrate that the cited art teaches or suggest the recitations of these claims. For example, the cited art fails to disclose or suggest, *inter alia*, “adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in amended independent claim 1.

A. Claims 1-3, 5-9, 14-17, 19-23, 28-31, 33-37, and 42-45

Maycock discloses “[a] method and system for managing credit card transactions.” *Maycock*, Abstract. According to *Maycock*, “an account holder [is

allowed] to enter limitations to create an authorized transaction” *Id.* at ¶ 0030. The steps to create an authorized transaction, as disclosed in *Maycock*, include selecting a credit card account, authorizing a credit limit for an authorized transaction, and selecting a vendor or vendors, and authorizing the length of time to complete a transaction. *Id.* at ¶¶ 0031-0033; FIG. 4.

As admitted by the Examiner, *Maycock* fails to disclose or suggest, *inter alia*, “adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in amended independent claim 1.

However, according to the Examiner, “Fowler teaches combo-card wherein a transaction and/or membership card may have one or more and preferable multiple AAPs and/or other marketing programs” Office Action, p. 4. Furthermore, the Examiner states that “Fowler further teaches a rate calculation for performing transactions at specific merchants including earning points on an escalating scale” Office Action, p. 4. The Examiner associates *Fowler*’s discussion of “earning points on an escalating scale” with “adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in amended independent claim 1. Applicants disagree with the Examiner’s characterization of the cited art.

Fowler is directed towards “automated marketing programs” that implement “one or more program rules matrix modules that calculate benefits to customers based on

one or more customer identifier(s), one or more merchant identifier(s) and one or more customer behavior(s).” *Fowler*, Abstract. Using the example of point allocation to illustrate the stated benefits, *Fowler* discloses that “[p]oints may be allocated in a variety of ways, such as a percentage of the transaction amount; an established ratio of points per transaction dollar; fixed points per transaction dollar; and/or minimum and/or maximum number of points per transaction, and the like.” *Id.* at ¶ 0075 (emphasis added). In other words, *Fowler* discloses the **allocation of points**, not “adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in amended independent claim 1.

Accordingly, the Examiner’s reliance on *Fowler* is misplaced and thus, the rejection of claim 1 is legally deficient because the prior art fails to teach or suggest each and every claim recitation of independent claim 1. Consequently, because the Examiner has failed to establish a *prima facie* case of obviousness, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of amended independent claim 1.

Claims 2, 3, 5-9, 14, and 43 depend from claim 1. As explained, the cited art fails to support the rejection of claim 1 under 35 U.S.C. § 103(a). Accordingly, for at least the same reasons set forth above in connection with claim 1, the rejection of dependent claims 2, 3, 5-9, 14, and 43 is legally deficient, should be withdrawn, and the claims allowed.

Amended independent claims 15 and 29, although of different scope, include recitations similar to those of amended independent claim 1, and are therefore

allowable for at least the same reasons set forth above. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of amended independent claims 15 and 29.

Claims 16-17, 19-23, 28, and 44 depend from independent claim 15, and claims 30-31, 33-37, 42, and 45 depend from independent claim 29. As explained above, the cited art does not support the rejection of claims 15 and 29. Therefore, dependent claims 16-17, 19-23, 28, 30-31, 33-37, 42, 44, and 45 are allowable for at least the same reasons set forth above in connection with amended independent claims 15 and 29.

B. Claims 4 and 10-13

Claims 4 and 10-13 depend from independent claim 1 and thus recite a combination including, for example, “adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time.” As discussed above, *Maycock* and *Fowler* fail to disclose or suggest at least this element of claim 1.

The Examiner alleges *Yun* teaches, for example, “a financial account management system . . . ,” “applying first fees . . . based on the first account parameter . . . ,” “applying second fees . . . based on the second account parameter . . . ,” “wherein the first and second account parameters are first and second interest rates . . . ,” and “wherein the first and second account parameters include first and second finance charges” Office Action, pp. 7-8. Despite these characterizations, none of which Applicants concede, the reference fails to cure the deficiencies of *Maycock* and *Fowler*,

as discussed above. That is, *Yun* also fails to teach or suggest at least “adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time,” as recited in independent claim 1, from which claims 4 and 10-13 depend.

Accordingly, because the prior art fails to teach or suggest each and every claim recitation of claims 4 and 10-13, the rejection of these claims is legally deficient, should be withdrawn, and the claims allowed.

Claims 18, 24-27 depend from amended independent claim 15. Claims 32 and 38-41 depend from amended independent claim 29. As explained, the cited art fails to support the rejection of claims 15 and 29 under 35 U.S.C. § 103(a). Accordingly, for at least the same reasons set forth above in connection with claims 15 and 29, the rejection of dependent claims 18, 24-27, 32, and 38-41 is legally deficient should be withdrawn, and the claims allowed.

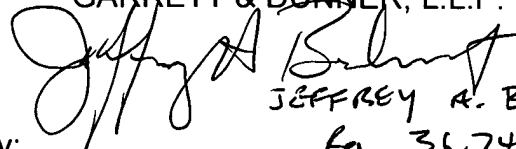
IV. Conclusion

In view of the foregoing amendments and remarks, Applicants submit that this claimed invention is neither anticipated nor rendered obvious in view of the cited art. Applicants therefore request reconsideration and reexamination of this application, and the timely allowance of the pending claims.

In addition, the Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statements are identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge
any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,
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